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SO ORDERED.

SIGNED this 19 day of June, 2007.

J. Rich Leonard
United States Bankruptcy Judge

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

KIMBERLY MCKILLOP, Case No. 04-00153-8-JRL Case No. 03-04580-8-JRL ROLAND MOORING, RHONDA MOORING, FRANKIE MORRISON, Case No. 02-10839-8-JRL CHERYL MOTT, Case No. 05-10599-8-JRL BERNADETTE MURRILL, Case No. 04-00912-8-JRL JOHN PETERSON, PEARL PETERSON, Case No. 04-02356-8-JRL CLYDE RICH, WILMA RICH, Case No. 02-05649-8-JRL Case No. 05-00444-8-JRL RHONDA RICH, Case No. 03-07780-8-JRL JAMES RYAN, SUSAN RYAN, ELMER SAWYER, JR., Case No. 05-01891-8-JRL FAAFETAI SEIULI, MALELE SEIULI, Case No. 06-00046-8-JRL Case No. 04-00857-8-JRL TAMMY SMALLWOOD, Case No. 04-00549-8-JRL TINA ANN SMITH, FAITH SOUZA, Case No. 04-06531-8-JRL ARTHUR STEWART, LINDA STEWART, Case No. 03-09628-8-JRL JAMES STRICKLAND, Case No. 04-05868-8-JRL Case No. 03-10902-8-JRL TERRY THACKER, ANNIE THACKER, DOLPHUS THOMPSON, SR., JACQUELINE Case No. 03-05592-8-JRL THOMPSON, KENNETH WALLER, DEBRA WALLER, Case No. 04-02051-8-JRL FAYE WATKINS, Case No. 03-07062-8-JRL FLEMING WIGGINS, LYDIA WIGGINS, Case No. 04-07669-8-JRL

Debtors. Chapter 13

## <u>ORDER</u>

This case is before the court on the applications for additional attorney's fees filed by Peter K. Gemborys. On June 13, 2007, the court conducted a hearing on these matters in Wilmington, North Carolina.

In these cases, Mr. Gemborys is seeking non-base fees for services performed more than one year after the bankruptcy filing or for the fourth service provided within the first year of a bankruptcy case. The trustee objected to the fee applications, asserting that the length of time between the services rendered and the filing of the fee applications places an unreasonable burden on the debtors and the estates.

At the hearing, Mr. Gemborys testified that, as a result of his review of cases after his suspension from practice before this court in November 2006, he discovered that his office staff had not filed fee applications for services warranting non-base fees. Mr. Gemborys asserted that, until he independently reviewed the cases, he was unaware that the fee applications had not been filed for the services performed.

Mr. Gemborys noted that Local Rule 2016-1, addressing compensation of professionals, does not set forth a filing deadline for non-base fee applications. Despite the absence of a finite deadline in the local rule, equity imposes a duty to act in a reasonable manner. "[I]ndependently of any limitation prescribed for the guidance of courts of law, equity may, in the exercise of its own inherent powers, refuse relief where it is sought after undue and unexplained delay, and when injustice would be done, in the particular case, by granting the relief asked." Wolf v. Citizens Bank & Trust Co. of Southern Pines, 92 F.2d 233, 236 (4th Cir. 1937). Some of the fee applications involve services provided years ago in cases that are closing. The reason for the delay is simply administrative oversight. The court has reviewed the non-base fee applications at issue. The court finds that, for cases where services were provided before January 1, 2006, the delay is unreasonable and unjustified requiring debtors who have anticipated the closing of their cases to extend the terms of their plan to accommodate fees for services that were rendered years ago. For those cases where services were provided January 1, 2006 or thereafter, the court will grant the non-base fee

applications.

Based on the foregoing, the court DENIES the following non-base fee applications:

| Case                                             | Petition<br>Filed | Service                                                                      | Date Service<br>Provided                                                                       | Date<br>Application<br>Filed | Amount<br>Sought |
|--------------------------------------------------|-------------------|------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|------------------------------|------------------|
| Kenneth Waller<br>Debra Waller<br>04-02051-8-JRL | 3/12/04           | Representing debtors on motion to modify plan post-confirmation              | Motion filed 3/21/05. Order approving motion entered 4/15/05.                                  | 4/25/07                      | \$250            |
| Tina Smith<br>04-00549-8-JRL                     | 1/21/04           | Representing debtor on motion to modify plan post-confirmation               | Motion filed 3/31/05. Order approving motion entered 4/27/05.                                  | 4/25/07                      | \$250            |
| Kimberly<br>McKillop<br>04-00153-8-JRL           | 1/7/04            | Representing debtor on trustee's motion to dismiss                           | Trustee's motion filed 3/31/05. Debtor's response filed 6/2/05. Consent order entered 7/13/05. | 4/25/07                      | \$200            |
| Terry Thacker<br>Annie Thacker<br>03-10902-8-JRL | 12/18/03          | Representing debtors on American General Finance's objection to confirmation | Objection filed 6/11/04 and heard 7/7/04. Order denying objection entered 7/14/04.             | 4/26/07                      | \$350            |

| Case                                              | Petition<br>Filed | Service                                                                                  | Date Service<br>Provided                                                                                                     | Date<br>Application<br>Filed | Amount<br>Sought |
|---------------------------------------------------|-------------------|------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|------------------------------|------------------|
| Arthur Stewart<br>Linda Stewart<br>03-09628-8-JRL | 11/5/03           | Representing debtors on trustee's second motion to dismiss                               | Trustee's motion filed 7/27/04. Debtors' response filed 8/6/04. Consent order entered 10/14/04.                              | 4/30/07                      | \$200            |
| Clyde Rich<br>Wilma Rich<br>02-05649-8-JRL        | 7/8/02            | Representing<br>debtors on<br>Citicorp Trust<br>Bank's motion<br>for relief from<br>stay | Citicorp Trust<br>Bank's motion<br>filed 9/7/04.<br>Response filed<br>9/15/04.<br>Consent order<br>entered<br>10/25/04.      | 4/25/07                      | \$350            |
| Clyde Rich<br>Wilma Rich<br>02-05649-8-JRL        | 7/8/02            | Representing debtors on trustee's second motion to dismiss                               | Trustee's motion filed 7/16/03. Debtors' response filed 7/22/03. Trustee's motion withdrawn 9/25/03.                         | 4/25/07                      | \$200            |
| James Strickland<br>04-05868-8-JRL                | 7/28/04           | Representing debtor on trustee's second motion to dismiss                                | Trustee's motion filed 7/19/05. Debtor's response filed 7/27/05. Hearing held 9/21/05. Order denying motion entered 9/28/05. | 4/25/07                      | \$200            |

| Case                                                                  | Petition<br>Filed | Service                                                                        | Date Service<br>Provided                                                                           | Date<br>Application<br>Filed | Amount<br>Sought |
|-----------------------------------------------------------------------|-------------------|--------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|------------------------------|------------------|
| James Strickland<br>04-05868-8-JRL                                    | 7/28/04           | Representing<br>debtor on<br>motion to set<br>aside order<br>lifting stay      | Debtor's motion filed 10/27/05. Consent order entered 12/14/05 vacating previous order.            | 4/25/07                      | \$250            |
| Tammy<br>Smallwood<br>04-00857-8-JRL                                  | 2/4/04            | Representing<br>debtor on<br>Green Tree's<br>motion for<br>relief from<br>stay | Green Tree's motion filed 3/23/05. Debtor's response filed 3/28/05. Consent order entered 4/26/05. | 4/25/07                      | \$350            |
| James Ryan<br>Susan Ryan<br>03-07780-8-JRL                            | 9/8/03            | Representing debtors on trustee's motion to dismiss                            | Trustee's motion filed 12/1/04. Debtors' response filed 12/3/04. Consent order entered 1/31/05.    | 4/25/07                      | \$200            |
| Faye Watkins<br>03-07062-8-JRL                                        | 8/12/03           | Representing debtor on trustee's motion to dismiss                             | Trustee' motion filed 12/28/04. Consent order entered 3/2/05.                                      | 4/25/07                      | \$200            |
| Dolphus<br>Thompson, Sr.,<br>Jacqueline<br>Thompson<br>03-05592-8-JRL | 6/23/03           | Representing debtor on trustee's motion to dismiss                             | Trustee's motion filed 10/28/05. Consent order entered 12/12/05.                                   | 4/25/07                      | \$200            |

| Case                                                | Petition<br>Filed | Service                                                                              | Date Service<br>Provided                                                                                  | Date<br>Application<br>Filed | Amount<br>Sought |
|-----------------------------------------------------|-------------------|--------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|------------------------------|------------------|
| Roland Mooring,<br>Rhonda Mooring<br>03-04580-8-JRL | 5/21/03           | Representing debtor on trustee's motion to dismiss                                   | Trustee's motion filed 10/27/04. Debtors' response filed 11/3/04. Consent order entered 1/5/05.           | 4/25/07                      | \$200            |
| Frankie Morrison<br>02-10839-8-JRL                  | 12/27/02          | Representing<br>debtor on Ford<br>Motor<br>Company's<br>objection to<br>confirmation | Objection to confirmation filed 7/29/03. Hearing held 9/11/03. Order resolving objection entered 9/22/03. | 4/30/07                      | \$350            |
| Frankie Morrison<br>02-10839-8-JRL                  | 12/27/02          | Representing debtor on trustee's second motion to dismiss                            | Trustee's second motion to dismiss filed 7/29/04. Debtor's response filed 8/6/04. Motion denied 11/20/04. | 4/30/07                      | \$200            |
| Bernadette Murrill<br>04-00912-8-JRL                | 2/4/04            | Representing debtor on motion to modify plan post-confirmation                       | Debtor's motion filed 7/21/05. Order granting motion entered 8/17/05.                                     | 4/25/07                      | \$250            |
| Fleming Wiggins,<br>Lydia Wiggins<br>04-07669-8-JRL | 10/4/04           | Representing debtors in lien avoidance action against Modern Finance (05-0006-8-AP). | Action filed 1/7/05. Default judgment entered against creditor on 2/16/05.                                | 4/25/07                      | \$500            |

| Case                                                   | Petition<br>Filed | Service                                                         | Date Service<br>Provided                                              | Date<br>Application<br>Filed | Amount<br>Sought |
|--------------------------------------------------------|-------------------|-----------------------------------------------------------------|-----------------------------------------------------------------------|------------------------------|------------------|
| John Peterson, Jr.<br>Pearl Peterson<br>04-02356-8-JRL | 3/23/04           | Representing debtors on motion to modify plan post-confirmation | Debtors' motion filed 3/31/05. Order granting motion entered 4/27/05. | 4/25/07                      | \$250            |

The court GRANTS the following non-base fee applications:

| Case                                               | Petition<br>Filed | Service                                                | Date Service<br>Provided                                                                                                | Date<br>Application<br>Filed | Amount<br>Sought |
|----------------------------------------------------|-------------------|--------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|------------------------------|------------------|
| Faafetai Seiuli<br>Malele Seiuli<br>06-00046-8-JRL | 1/6/06            | Representing<br>debtors on<br>motion to<br>extend stay | Motion filed 1/23/06. Hearing held 1/31/06. Order approving motion entered 3/7/06.                                      | 4/25/07                      | \$350            |
| Rhonda Rich<br>05-00444-8-JRL                      | 1/18/05           | Representing debtors on trustee's motion to dismiss    | Trustee's motion to dismiss filed 9/1/06. Matter removed from calendar prior to hearing. Consent order entered 11/6/06. | 4/25/07                      | \$200            |
| Faith Souza<br>04-06531-8-JRL                      | 8/20/04           | Representing debtor on trustee's motion to dismiss     | Trustee's motion filed 1/30/06. Hearing held 2/28/06. Order denying motion entered 3/17/06.                             | 4/30/07                      | \$200            |

| Case                                                | Petition<br>Filed | Service                                                                                         | Date Service<br>Provided                                                                                                                                                                          | Date<br>Application<br>Filed | Amount<br>Sought |
|-----------------------------------------------------|-------------------|-------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|------------------|
| Cheryl Mott<br>05-10599-8-JRL                       | 12/6/05           | Representing debtor on motion to extend stay                                                    | Debtor's motion filed 12/8/05. Hearing held 1/3/06. Order granting motion entered 2/10/06.                                                                                                        | 4/26/07                      | \$350            |
| Elmer Sawyer, Jr.<br>05-01891-8-JRL                 | 3/9/05            | Representing debtor on motion to modify plan post-confirmation                                  | Debtor's motion filed 3/13/06. Order granting motion entered 4/7/06.                                                                                                                              | 4/25/07                      | \$250            |
| James Ryan<br>Susan Ryan<br>03-07780-8-JRL          | 9/8/03            | Representing debtors on trustee's second motion to dismiss                                      | Trustee's motion filed 8/4/06. Debtors' response filed 8/22/06. Motion withdrawn 11/29/06.                                                                                                        | 4/25/07                      | \$200            |
| Fleming Wiggins,<br>Lydia Wiggins<br>04-07669-8-JRL | 10/4/04           | Representing debtors in lien avoidance action against Old Canal Financial Corp. (05-00082-8-AP) | Action filed 4/25/05 originally against Master Financial, which was later dismissed and served against Canal Financial Corp. Consent order entered 6/9/06 stripping Canal Financial Corp.'s lien. | 4/25/07                      | \$1,000          |